

SDms# 31255

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3 United States Environmental  
4 Protection Agency  
5 Region IX  
6 215 Fremont Street  
7 San Francisco, CA 94105  
8 415-974-8042

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 9

9 IN THE MATTER OF: )

10 KOPPERS COMPANY, INC., )

11 OROVILLE, CALIFORNIA, )

12 RESPONDENT )

13 Proceeding Under Section 106(a) )  
14 of the Comprehensive Environ- )  
15 mental Response, Compensation, )  
16 and Liability Act of 1980 )  
(42 U.S.C. §9606(a)) )

Docket No. 86-04

17  
18 ADMINISTRATIVE ORDER  
19 ON CONSENT

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1 I. AUTHORITY

2 A. This Consent Order is issued pursuant to the authority vested  
3 in the President of the United States by Section 106(a) of the  
4 Comprehensive Environmental Response, Compensation, and Lia-  
5 bility Act of 1980 ("CERCLA"), 42 U.S.C. §9606(a), and dele-  
6 gated to the Administrator of the United States Environmental  
7 Protection Agency ("EPA" or "Agency") on August 14, 1981, by  
8 Executive Order 12316, 46 Fed. Reg. 42237, and further  
9 delegated to the Assistant Administrator for Solid Waste and  
10 Emergency Response and the Regional Administrators by EPA  
11 Delegation Nos. 14-14 and 14-14-A, the latter of which was  
12 signed on April 16, 1984. This authority has been redelegated  
13 to the Director, Toxics & Waste Management Division, EPA,  
14 Region 9.

15 B. The Respondent agrees to undertake all actions required by  
16 the terms and conditions of this Consent Order in accordance  
17 with the provisions of the National Contingency Plan, 40  
18 C.F.R. Part 300.61 et seq., as amended.

19 C. The Respondent consents to and does not contest EPA  
20 jurisdiction regarding this Consent Order.

21 II. STATEMENT OF PURPOSE

22 In entering into this Consent Order, Koppers Company  
23 agrees:

24 A. To conduct the Remedial Investigation ("RI") described in the  
25 Remedial Investigation and Feasibility Study Work Plan ("RI/FS  
26 Work Plan"), a copy of which is attached as Attachment A and  
27 by this reference made a part of this Consent Order, in  
28 order to determine fully the nature and extent of the threat

1 to the public health or welfare or the environment, if any,  
2 caused by the release or threatened release of hazardous  
3 substances, pollutants, or contaminants at or from the Koppers  
4 Company, Oroville ("the Site"), as defined in paragraph  
5 IV(A) below. The RI/FS Work Plan specifies work to be performed  
6 during the Remedial Investigation, including sediment and  
7 surface water sampling, soil core boring and sampling,  
8 monitoring well placement, ground water sampling, pumping  
9 and aquifer tests, and geophysical testing. Work to be  
10 performed to assist the Feasibility Study includes pilot  
11 projects for land treatment and wastewater characterization  
12 and treatability. A list of reports, documents, and other  
13 deliverables that Koppers will provide for EPA review, comment  
14 and/or approval is found in the RI/FS Work Plan and this  
15 Consent Order.

16 B. To conduct the Feasibility Study ("FS") described in the  
17 RI/FS Work Plan evaluating remedial action alternatives to  
18 prevent and eliminate the release or threatened release, if any,  
19 of hazardous substances, pollutants, or contaminants at or  
20 from the Site.

21 C. To conduct the activities required by this Consent Order in  
22 a manner consistent with the National Contingency Plan.

23 D. By consenting to the entry of this Order, Koppers neither  
24 admits nor denies any allegations of law or fact, other than  
25 the jurisdictional allegations, contained in this Order.  
26 Koppers does not waive its rights or defenses regarding such  
27 allegations of law or fact in any other proceeding.

28 ///

1 III. CONCLUSIONS OF LAW

- 2 A. The Site is a "facility" as defined in Section 101 (9) of  
3 CERCLA, 42 U.S.C. §9601 (9).  
4 B. Koppers is a "person" as defined in Section 101 (21) of  
5 CERCLA, 42 U.S.C. §9601 (21).  
6 C. Wastes and their constituents at the Site are "hazardous  
7 substances" as defined in Section 101 (14) of CERCLA, 42  
8 U.S.C. §9601(14).  
9 D. The past, present, and potential migration of hazardous  
10 substances from the Site constitutes an actual or threatened  
11 "release" as defined in Section 101(22) of CERCLA, 42 U.S.C.  
12 §9601(22).  
13 E. Koppers is a responsible party pursuant to Section 107(a) of  
14 CERCLA, 42 U.S.C. §9607(a).

15 IV. DETERMINATIONS

- 16 A. Respondent Koppers Company, Inc. ("Koppers") is a corporation  
17 organized under the laws of the State of Delaware and doing  
18 business in the State of California. Its headquarters is  
19 located in Pittsburgh, Pennsylvania. The Site is a wood-  
20 treating facility that covers an area of about 200 acres and  
21 is located on Baggett-Marysville Road in Oroville, California.  
22 (See Map) The Site is located approximately one-half mile  
23 east of the Feather River and two miles southwest of Oroville,  
24 California. It is bounded on the south by Ophir Road, on the  
25 east by Baggett-Marysville Road, on the north by Georgia Pacific  
26 Way, and on the west by Louisiana-Pacific Corporation's property.  
27 Early in this century part of the site on which the Koppers  
28 plant is located was dredged for gold. The plant was owned

1 by the Hutchison Lumber Mill from 1920 to 1948, by the National  
2 Wood Treating Corp. from 1948 to 1955, and by Koppers from  
3 1955 to the present.

4 B. The first ground water aquifer is located at a depth of 30  
5 feet under the Site. Ground water moves towards the south  
6 and southwest. Surface water flows towards the west.

7 C. In September, 1984 the Site was placed on the Environmental  
8 Protection Agency's National Priorities List as defined in  
9 Section 105 of CERCLA (42 U.S.C. 9605).

10 D. Koppers Company's wood treating operations have released into  
11 the soil and ground water hazardous substances, pollutants,  
12 and contaminants, as defined in Section 101(14) of CERCLA  
13 (42 U.S.C. 9601) including pentachlorophenol, isopropyl ether,  
14 polynuclear aromatic hydrocarbons, creosote, arsenic, and  
15 chromium.

16 E. Preliminary investigations by the Koppers Company have revealed  
17 that approximately 43,000 cubic yards of soil contain 10  
18 parts per million (ppm) or more of pentachlorophenol. Other  
19 contaminants in surface soils onsite include creosote, arsenic,  
20 and chromium. Ground waters below the site have been conta-  
21 minated with up to 15,000 parts per billion (ppb) pentachlo-  
22 rophenol, 7000 ppb naphthalene (a polynuclear aromatic hydro-  
23 carbon) and 22,000 ppb isopropyl ether.

24 There are two offsite areas where ground water contamination  
25 has been found. Directly southwest of the Site, a number of  
26 private drinking water wells were found to contain  
27 up to 4000 ppb of pentachlorophenol. Koppers has installed  
28 recovery wells which have significantly reduced the penta-

1 chlorophenol levels in this area. A second plume of ground  
2 water contamination extends a distance of up to two miles  
3 south of the Site in an area known as the Lone Tree Road  
4 area. The Lone Tree Road area extends south from the Site  
5 to Palermo Road. It is bounded on the east by Lincoln  
6 Blvd., and on the west by State Highway 70. Contamination  
7 levels in this plume have reached 2000 ppb pentachlorophenol.  
8 The first occurrence of groundwater in this area is at a  
9 depth of 90-120 feet below ground surface. Isopropyl ether  
10 has been present along with pentachlorophenol at con-  
11 centrations in some instances, ranging to about the same  
12 concentrations as the pentachlorophenol.

13 F. Pentachlorophenol has a wide range of health effects, varying  
14 from skin problems to systemic damage to the liver, central  
15 nervous system, gastrointestinal tract, and renal and cardiac  
16 systems. It causes death in extremely high concentrations.  
17 Absorption can occur through ingestion, bathing or from  
18 wearing clothes contaminated with pentachlorophenol. The  
19 polynuclear aromatic hydrocarbon compounds are components  
20 of creosote and some are suspected carcinogens. Arsenic  
21 exposure has been linked to increased incidence of human  
22 lung and skin cancer and acute exposure to high levels can  
23 be fatal. Chromium has been shown to produce liver and  
24 kidney damage, internal hemorrhage, and respiratory dis-  
25 orders. The EPA and the California Department of Health  
26 Services have received complaints from Lone Tree Road residents  
27 of health problems which the residents contend may be caused  
28 by contact and use of the contaminated water. These complaints

1 include diarrhea and skin disorders.

2 G. About 30 domestic wells in the Lone Tree Road Area and the  
3 area southwest of the Site have been shown to contain levels  
4 of pentachlorophenol. Over 120 residents may be affected.  
5 This is a rural area, and residents typically have a few  
6 acres of land for crops, orchards, or pasture land which  
7 have been irrigated by well water.

8 H. A domestic water supply pipeline to provide water to residents  
9 in the Lone Tree Road area from the Oroville-Wyandotte  
10 Irrigation District (OWID) was completed by Koppers in March  
11 1986.

12 Based on the facts and the Conclusions of Law set out above, EPA  
13 has decided that:

- 14 1. The actual and/or threatened release of hazardous substances  
15 from the Site may present an imminent and substantial endanger-  
16 ment to the public health or welfare or the environment and  
17 2. The actions required by this Consent Order are necessary to  
18 protect the public health, welfare and the environment.

19 V. WORK TO BE PERFORMED

20 All work performed pursuant to this Consent Order shall be  
21 under the direction and supervision of a qualified engineer or  
22 geologist with expertise in hazardous waste site cleanup. Prior  
23 to initiation of site work, Koppers shall notify EPA in writing  
24 of the name, title, and qualifications of such engineer or  
25 geologist and of any contractors and/or subcontractors to be  
26 used in carrying out the terms of this Consent Order.

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1        Based on the foregoing, it is hereby AGREED TO AND ORDERED  
2 that the following work shall be performed by Koppers:

3 A.    Koppers shall perform the tasks and submit reports contained  
4 in the RI/FS Work Plan (Attachment 1). Deliverables to be  
5 submitted are listed below. This listing includes the  
6 type of review that EPA will conduct (either "Review and  
7 Comment" or "Review and Approve"). Each deliverable's  
8 content must include the items listed with it, along with  
9 the guidelines given in Sections 2.0 and 3.0 of the RI/FS  
10 Work Plan. These specifics are meant as a framework for  
11 the deliverables' content. Open discussions between Koppers  
12 and EPA will be necessary to assure that deliverables  
13 contain sufficient detail. Any reports, plans,  
14 specifications, schedules, and attachments required by  
15 this Consent Order are, upon approval by EPA, incorporated  
16 into this Consent Order. Any non-compliance with such EPA  
17 approved reports, plans, specifications, schedules, and  
18 attachments shall be considered a failure to achieve the  
19 requirements of this Consent Order and will subject Koppers  
20 to the provisions included in the "Stipulated Penalties"  
21 Section (Section XII.) of this Consent Order.

22        1. Deliverables

- 23            a) Monthly Status Reports - REVIEW AND COMMENT
- 24                    ° Results of all sampling, tests, or other technical
- 25                    data generated by Koppers or on its behalf in the
- 26                    RI/FS during the previous month.
- 27                    ° Schedule for sampling for following month.
- 28                    ° Any other items specified in the Final Work Plan.

1           b) Quarterly Ground-Water Monitoring Reports

2           - REVIEW AND COMMENT

3           ° Analytical data summary and short discussion.

4           ° Regional maps of well locations and:

5                 - water surface elevations and contours.

6                 - concentration levels and contours of pentachloro-  
7                 phenol and other significant contaminants, if any.

8           ° Laboratory reports.

9           ° QA/QC documentation.

10          c) Phase I Ground-Water Reports

11          i) Well Installation - REVIEW AND APPROVE

12                 ° Summary of investigative activities.

13                 ° Site plan maps indicating well locations.

14                 ° Analytical data summary and short discussion.

15                 ° Laboratory reports.

16                 ° Pumping test results.

17                 ° Drilling logs, well development logs, depths of  
18                 completion and screened intervals.

19                 ° QA/QC documentation.

20          ii) Phase I Summary - REVIEW AND APPROVE

21                 ° Analytical data summary and short discussion.

22                 ° Laboratory reports.

23                 ° QA/QC documentation

24                 ° Pump test analyses.

25                 ° Geologic cross sections

26                 ° Site plan maps indicating well locations, water  
27                 surface elevation contours and contours of  
28                 pentachlorophenol and other significant

1 contaminants, if any.

2 ° Recommendations of necessary Phase II work.

3 d) Phase I Soil Report - REVIEW AND APPROVE

- 4 ° Summary of soil investigation activities.
- 5 ° Analytical data summary and short discussion.
- 6 ° Laboratory reports.
- 7 ° Site plan map with appropriate presentation of
- 8 analytical results.
- 9 ° Schematic subsurface geologic cross section with
- 10 appropriate presentation of analytical results.
- 11 ° Physical testing results section with short
- 12 discussion on relationship to analytical results.
- 13 ° Soil boring logs.
- 14 ° QA/QC documentation.
- 15 ° Recommendations of necessary Phase II work.

16 e) Phase I Surface Water and Sediment Report

17 - REVIEW AND APPROVE

- 18 ° Summary of investigative activities.
- 19 ° Site plan map indicating sampling locations and
- 20 appropriate presentation of analytical results.
- 21 ° Analytical data summary and short discussion.
- 22 ° Laboratory reports.
- 23 ° QA/QC Documentation.
- 24 ° Recommendations of necessary Phase II work.

25 f) Preliminary Wastewater Treatment Investigation Report

26 - REVIEW AND COMMENT

- 27 ° Summary of investigative activities.
- 28 ° Analytical data summary and discussion.

- Laboratory reports.
  - QA/QC Documentation.
  - Recommendations for additional studies.
- g) Preliminary Land Treatment Demonstration Report
- REVIEW AND COMMENT
- Summary of investigative activities.
  - Analytical data summary and short discussion.
  - Laboratory reports.
  - QA/QC Documentation.
  - Recommendations for additional studies.
- h) Remedial Investigation Report
- (Draft)-REVIEW AND COMMENT  
(Final)-REVIEW AND APPROVE
- i) Remedial Action Objectives and Potential Remedial  
Action Alternatives Report
- (Draft)-REVIEW AND COMMENT  
(Final)-REVIEW AND APPROVE
- j) Alternative Screening Report
- (Draft)-REVIEW AND COMMENT  
(Final)-REVIEW AND APPROVE
- k) Feasibility Study Report
- (Draft)-REVIEW AND COMMENT  
(Final)-REVIEW AND APPROVE

B. 1. EPA shall review and approve or disapprove each final report, document, or other deliverable in paragraphs V(A)

1 (1)(c), (d),(e),(h),(i),(j), and (k) within 14 days, or  
2 more if needed, of its submission.

3 2. Within 21 days, or more if needed, of receipt of Koppers'  
4 submittals pursuant to paragraphs (c),(d) and (e), EPA shall  
5 submit to Koppers its comments. Koppers shall submit its  
6 final deliverable incorporating EPA's comments within 21 days  
7 of receiving EPA's comments.

8 3. Within 45 days, or more if needed, of receipt of Koppers'  
9 submittals pursuant to paragraphs (h),(i),(j), and (k),  
10 EPA shall submit to Koppers its comments. Koppers shall  
11 submit its final deliverables incorporating EPA's comments  
12 within 30 days of receiving EPA's comments.

13 4. Koppers may begin dispute resolution procedures, if  
14 appropriate, after it receives EPA's approval or disapproval  
15 of the amended deliverable.

16 5. Within 45 days, or more if needed, of Koppers' submittals  
17 pursuant to paragraphs (f) and (g), EPA will submit its  
18 comments to Koppers. EPA's comments on these documents must  
19 be incorporated into any subsequent reports concerning  
20 their subject matter (e.g., RI reports, Alternative Screening  
21 report, FS report.)

22 6. Koppers' deadlines will be extended for an amount equal  
23 to any extra time needed by EPA beyond the time specified  
24 above to review and comment on the above deliverables.

25 c. 1. Within thirty (30) days of the publication of EPA's Record  
26 of Decision, Koppers shall submit a closure plan and closure  
27 cost estimate that fully complies with the requirements of 40  
28 C.F.R. 265.112, 265.228 and 265.142.

1 2. The documentation of compliance with this paragraph  
2 (V.C.), shall be addressed to Chief, Waste Enforcement  
3 Section (T-2-4), Waste Programs Branch, U.S. Environmental  
4 Protection Agency, 215 Fremont Street, San Francisco, CA  
5 94105; with a copy to:

6 Executive Officer  
7 California Regional Water Quality  
8 Control Board  
9 Central Valley Region  
3201 S Street  
Sacramento, CA 95816

10 Regional Administrator  
11 Northern California Section  
12 California Department of Health Services  
4250 Power Inn Road  
Sacramento, CA 95026

13 3. Compliance with this paragraph is excluded from the  
14 stipulated penalties (paragraph XII).

15 D. Documents, including progress and technical reports,  
16 approvals, disapprovals, and other correspondence to be  
17 submitted pursuant to this Consent Order, shall be sent to  
18 the following addressees or to such other addresses as the  
19 parties hereafter may designate in writing, and shall be  
20 deemed submitted on the date received by EPA.

21 1) Documents to be submitted to EPA (other than those  
22 required by paragraph V.C.) shall be sent to:

23 John Kemmerer (T-4-4)  
24 Toxics & Waste Management Division  
25 US EPA, Region 9  
215 Fremont Street  
San Francisco, CA 94105

26 Phone Number: (415)-974-7726  
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Copies shall be sent to:

Joe DeMartini  
Woodward-Clyde Consultants  
One Walnut Creek Center  
100 Pringle Avenue  
Walnut Creek, CA 94596

George Muehleck  
Ecology and Environment  
120 Howard Street  
Suite 640  
San Francisco, CA 94105

William Marshall  
California Regional Water Quality Control Board  
Central Valley Region  
3201 S Street  
Sacramento, CA 95816-7090

Tony Landis  
California Department of Health Services  
Northern California Section  
4250 Power Inn Road  
Sacramento, CA 95026

2) Documents to be submitted to Koppers shall be sent to:

David R. Kerschner  
Koppers Company, Inc.  
436 Seventh Avenue  
Pittsburgh, Pa. 15219

Thomas R. Hays  
Koppers Company, Inc.  
436 Seventh Avenue  
Pittsburgh, Pa. 15129

Copies shall be sent to:

Ray C. Thompson  
Hefner, Stark & Marios  
555 Capital Mall, Suite 1425  
Sacramento, Ca. 95814

Stephen T. Smith  
Plant Engineer  
Koppers Company, Inc.  
P.O. Box 351  
Oroville, Ca. 95965

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1 E. EPA may determine that additional tasks, including remedial  
2 investigatory work, engineering evaluation, and interim  
3 response measures are necessary as part of the RI/FS.  
4 Koppers shall implement any additional tasks which EPA  
5 determines are necessary as part of the RI/FS. The additional  
6 work shall be completed in accordance with the standards,  
7 specifications, requirements and schedule determined or  
8 approved by EPA. The time deadline for performance of any  
9 activity dependent on additional work will be extended by  
10 EPA for an amount of time equal to that required to perform  
11 the additional work unless the dependent activity can be  
12 implemented in a shorter time.

13 VI. DESIGNATED PROJECT COORDINATORS

14 A. On or before the effective date of this Consent Order, EPA  
15 shall designate a Project Coordinator who shall have the  
16 authorities, duties, and responsibilities vested in the  
17 Remedial Project Manager by the National Contingency Plan.  
18 Koppers shall also designate a Project Coordinator. Both  
19 Project Coordinators shall be responsible for overseeing the  
20 implementation of this Consent Order. The EPA Project Coordinator will be EPA's designated representative at the Site.  
21 To the maximum extent possible, all oral communications  
22 between Koppers and EPA concerning the activities performed  
23 pursuant to this Order shall be directed through the Project  
24 Coordinators. All documents, including progress and technical  
25 reports, approvals, and other correspondence concerning the  
26 activities performed pursuant to the terms and conditions of  
27 this Consent Order, shall be delivered in accordance with  
28

1 paragraph V(D) above.

- 2 B. EPA and Koppers each have the right to change their respective  
3 Project Coordinators. Such a change shall be accomplished  
4 by notifying the other party in writing at least one week  
5 prior to the change except in the case of emergency, in  
6 which case notification shall be made orally followed by  
7 written notification as soon as possible.
- 8 C. Consistent with the provisions of this Consent Order, the EPA  
9 Project Coordinator shall also have the authority vested in  
10 the On-Scene-Coordinator ("OSC") by the National Contingency  
11 Plan, unless EPA designates a separate individual as OSC, who  
12 shall then have such authority.
- 13 D. The absence of the EPA Project Coordinator or OSC from the  
14 Site shall not be cause for the stoppage of work.

15 VII. QUALITY ASSURANCE

16 Koppers shall use quality assurance, quality control, and  
17 chain of custody procedures in accordance with the QAPP Plan  
18 approved by EPA as part of the RI/FS Work Plan.

19 VIII. SITE ACCESS

20 To the extent that Koppers requires access to land other  
21 than land it owns, Koppers will use its best efforts to obtain  
22 access agreements for itself, its contractors and agents, EPA,  
23 and its contractors and agents, from the present owners or lessees  
24 as the need for such access may arise. In the event that Koppers  
25 is not able to obtain site access to property owned or controlled  
26 by persons or entities other than Koppers, Koppers shall notify  
27 EPA promptly regarding both the lack of, and efforts to obtain,  
28 such access.

IX. SAMPLING, ACCESS, AND DATA/DOCUMENT AVAILABILITY

- A. At the request of EPA, Koppers shall provide split or duplicate samples to EPA and/or its authorized representatives at the time the samples are taken of any samples collected by Koppers as part of the RI/FS Work Plan. Koppers shall notify EPA of any planned sample collection activity in the preceding monthly report. EPA shall provide to Koppers any results from its analysis of the split samples.
- B. Koppers shall permit EPA, and its authorized representative to have reasonable access at all times to the Site to monitor any activity conducted pursuant to the RI/FS Work Plan or conduct such tests or investigations as EPA deems necessary.
- C. Koppers shall permit EPA and/or its authorized representative to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, that in any way concern soil, ground water, surface water or air contamination at the site.
- D. Koppers may assert a confidentiality claim, covering part or all of the information requested by this Consent Order pursuant to 40 C.F.R. §2.203(b). However, sampling data shall not be claimed as confidential by Koppers. Information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA without further notice to Koppers.

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X. RECORD PRESERVATION

EPA and Koppers agree that each shall preserve, during the pendency of this Consent Order and for a minimum of six (6) years after termination of this Consent Order, separate central depositories of the records and documents required to be prepared under the RI/FS Work Plan. If EPA requests that some or all such documents be preserved for a longer period of time, Koppers shall either comply with that request or permit EPA to obtain or copy any such document prior to its destruction.

XI. DISPUTE RESOLUTION

If Koppers objects to any EPA decision, not including comments, pursuant to Article V(B), V(E), or XX, Koppers shall notify EPA in writing of its objections within fourteen (14) calendar days of receipt of the decision. EPA and Koppers then have an additional fourteen (14) calendar days from the receipt by EPA of the notification of objection to reach agreement. At the end of the fourteen (14) day discussion period, EPA shall provide a written statement of its decision to Koppers. That statement is deemed to be a final Agency action. In any action, for any reason, the EPA decision is presumed valid. Any judicial review of an EPA decision shall be sought by the parties only in the United States District Court for the Eastern District of California. Use of the dispute resolution provision will not relieve Koppers' duty to complete the other tasks in a timely manner in accordance with the schedule.

///

1 XII. STIPULATED PENALTIES

- 2 A. Except with respect to any extensions allowed by EPA in writ-  
3 ing, or excused by the provisions of Article XIII (Force  
4 Majeure), for each day in which Koppers fails to submit a  
5 report or document, or in which Koppers otherwise fails to  
6 achieve the requirements of this Order, Koppers agrees to  
7 pay the sum set forth below as stipulated penalties. These  
8 penalties shall accrue commencing upon Koppers' receipt of  
9 the written determination of disapproval, as specified in  
10 Article V, or upon the failure of Koppers to meet the sche-  
11 dule specified in the RI/FS Work Plan (Attachment 1), or  
12 upon written notice from EPA to Koppers that a violation of  
13 this Order has occurred. These penalties are not subject to  
14 Dispute Resolution (Article XI). Dispute Resolution shall  
15 not stay the accrual of these stipulated penalties.
- 16 B. Stipulated penalties shall accrue in accordance with paragraph  
17 XII(A) above in an amount determined by EPA, not to exceed  
18 \$5,000.00 a day.
- 19 C. Koppers payment of stipulated penalties will be payable upon  
20 demand by the Director, Toxics and Waste Management Division,  
21 U.S. EPA, Region 9, by check made payable to the United  
22 States Treasury addressed to:

23  
24 *AR* U.S. Environmental Protection Agency  
Superfund Accounting  
P.O. Box 371003M  
25 Pittsburgh, PA 15251

26 Koppers shall send a notification of any penalty paid to the  
27 EPA Project Coordinator.

28 ///

1 XIII. FORCE MAJEURE

2 Koppers shall perform all the requirements of this Consent  
3 Order according to the time limits set out in the RI/FS Work Plan  
4 unless their performance is prevented or delayed by events which  
5 constitute a force majeure.

6 For the purposes of this Order, a force majeure is defined  
7 as any event arising from causes beyond the reasonable control of  
8 Koppers. Economic hardship shall not be considered an event  
9 beyond the control of Koppers and shall not trigger the force  
10 majeure clause.

11 Koppers has the burden of proving by clear and convincing  
12 evidence that any delay is or will be caused by events reasonably  
13 beyond its control.

14 In the event of a force majeure, the time for performance  
15 of the activity delayed by the force majeure shall be extended  
16 for the time period of the delay attributable to the force majeure.  
17 The time for performance of any activity dependent on the delayed  
18 activity shall be similarly extended, except to the extent that  
19 the dependent activity can be implemented in a shorter time.  
20 EPA shall determine whether subsequent requirements are to be  
21 delayed and the time period granted for any delay. Koppers  
22 shall adopt all reasonable measures to avoid or minimize any  
23 delay caused by a force majeure.

24 In the event of a force majeure, Koppers shall immediately  
25 notify EPA's project coordinator orally and shall within seven  
26 (7) days of the oral notification, notify EPA in writing of the  
27 anticipated length and cause of the delay. The notification  
28 shall also state the measures taken and/or to be taken to prevent

1 or minimize the delay, and the time table by which Koppers intends  
2 to implement the delayed activity. Failure of Koppers to comply  
3 with the force majeure notice requirements will be deemed a  
4 forfeiture of its right to request a delay.

5 XIV. RESERVATION OF RIGHTS

6 Notwithstanding compliance with the terms of this Consent  
7 Order, including the completion of an EPA approved Remedial  
8 Investigation and Feasibility Study, Koppers is not released  
9 from liability, if any, for any actions beyond the terms of this  
10 Consent Order taken by EPA respecting this Site. EPA reserves the  
11 right to take any enforcement action pursuant to CERCLA and/or  
12 any other legal authority, including the right to seek injunctive  
13 relief, monetary penalties, and punitive damages for any violation  
14 of law or this Consent Order.

15 EPA expressly reserves all rights and defenses that they  
16 may have, including EPA's right both to disapprove of work  
17 performed by Koppers and to request that Koppers perform tasks  
18 in addition to those detailed in the RI/FS Work Plan, as provided  
19 in this Consent order. EPA reserves the right to undertake  
20 removal actions and/or remedial actions at any time. EPA reserves  
21 the right to seek reimbursement from Koppers for such costs  
22 incurred by the United States.

23 XV. REIMBURSEMENT OF COSTS

24 Within 60 days of the effective date of this Consent Order,  
25 EPA will submit to Koppers an accounting of all response and  
26 oversight costs incurred by EPA associated with this site to the  
27 effective date of the Consent Order (currently estimated to be  
28 \$250,000). In addition, at the end of each year, EPA shall

1 submit to Koppers an accounting of all response and oversight  
2 costs incurred by the U.S. Government not inconsistent with  
3 the National Contingency Plan with respect to this Consent  
4 Order. Koppers shall, within 30 calendar days of receipt of that  
5 accounting, remit a check for the amount of those costs made  
6 payable to the Hazardous Substance Response Trust Fund. Checks  
7 should specifically reference the identity of the site and be  
8 addressed to:

9 U.S. Environmental Protection Agency  
10 Superfund Accounting  
11 P.O. Box 371003M  
Pittsburgh, PA 15251  
Attention: Collection Officer for Superfund

12 A copy of the transmittal letter shall be sent to the EPA Project  
13 Coordinator.

14 EPA reserves the right to bring an action against Koppers  
15 pursuant to Section 107 of CERCLA, 42 U.S.C. §9607, for recovery  
16 of all response and oversight costs incurred by the United States  
17 related to this Consent Order and not reimbursed by Koppers, as  
18 well as any other unreimbursed past and future costs incurred  
19 by the United States in connection with response activities  
20 conducted pursuant to CERCLA at this site.

21 XVI. OTHER CLAIMS

22 Nothing in this Consent Order shall constitute or be construed  
23 as a release from any claim, cause of action or demand in law or  
24 equity against any person, firm, partnership, or corporation not  
25 a signatory to the Consent Order for any liability it may have  
26 arising out of or relating in any way to the generation, storage,  
27 treatment, handling, transportation, release, or disposal of any  
28 hazardous substances, hazardous wastes, pollutants, or contaminants

1 found at, taken to, or taken from the Site.

2 XVII. OTHER APPLICABLE LAWS

3 All actions required to be taken pursuant to this Consent  
4 Order shall be undertaken in accordance with the requirements of  
5 all applicable local, state, and federal laws and regulations  
6 unless an exemption from such requirements is specifically provided  
7 in this Consent Order.

8 XVIII. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

9 Koppers agrees to indemnify and hold the United States  
10 Government, its agencies, departments, agents, contractors, and  
11 employees, harmless from any and all claims or causes of action  
12 arising from or on account of acts or omissions of Koppers, its  
13 officers, employees, receivers, trustees, agents, or assigns, in  
14 carrying out the activities pursuant to this Consent Order. EPA  
15 is not a party in any contract involving Koppers at the Site.

16 XIX. PUBLIC COMMENT

17 Upon EPA approval of a Feasibility Study Final Report, EPA  
18 shall make both the Remedial Investigation Final Report and the  
19 Feasibility Study Final Report available for public review and  
20 comment for, at a minimum, a thirty (30) day period, pursuant to  
21 EPA's Community Relations Policy. Included with the documents  
22 available for public review will be EPA's proposed appropriate  
23 remedial alternatives, if any. Following the public review and  
24 comment period, EPA will respond to public comment and make a  
25 final determination as to the approved remedial action alternative.

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27

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1                   XX.   EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

2           In consideration of the communications between Koppers and  
3 EPA prior to the issuance of this Consent Order concerning its  
4 terms, Koppers agrees that there is no need for a settlement  
5 conference prior to the effective date of this Consent Order.  
6 Therefore, the effective date of this Consent Order shall be the  
7 date on which it is signed by EPA.

8           No informal advice, guidance, suggestions, or comments by  
9 EPA regarding reports, plans, specification, schedules, and any  
10 other writing submitted by Koppers will be construed as relieving  
11 Koppers of its obligation to obtain such formal approval as may  
12 be required by this Consent Order.

13           This Consent Order and attached Work plan are agreed to  
14 subject to public comment received during the official public  
15 comment period following the signing of the Order. EPA may make  
16 changes to the Work plan based on the public comment. Any  
17 dispute regarding the Revised Work Plan will be resolved  
18 pursuant to paragraph XI (Dispute Resolution).

19                   XXI.   PARTIES BOUND

20           This Consent Order shall apply to and be binding upon Koppers  
21 and EPA, their agents, successors, and assigns and upon all  
22 persons, contractors, and consultants acting under or for either  
23 Koppers or EPA or both.

24           No change in ownership or corporate or partnership status  
25 relating to the Site will in any way alter the status of Koppers  
26 or in any way alter Koppers' responsibility under this Consent  
27 Order. Koppers will be responsible, and will remain responsible  
28 for carrying out all activities required of them under this

1 Consent Order.

2 Koppers shall provide a copy of this Consent Order to  
3 all contractors, sub-contractors, laboratories, and consultants  
4 retained to conduct any portion of the work performed pursuant to  
5 this Consent Order within 14 calendar days of the effective date  
6 of this Consent Order or date of such retention.

7 XXII. NOTICE TO THE STATE

8 EPA has notified the State of California pursuant to the  
9 requirements of Section 106(a) of CERCLA.

10 XXIII. TERMINATION AND SATISFACTION

11 The provisions of the Consent Order shall be deemed satisfied  
12 upon Koppers' receipt of written notice from EPA that Koppers  
13 has demonstrated, to the satisfaction of EPA, that all of the  
14 terms of this Consent Order, including any additional tasks  
15 which EPA has determined to be necessary, have been completed.

16 IT IS SO AGREED AND ORDERED:

17 KOPPERS COMPANY, INC.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY

18  
19 By

RK Wagner  
R.K. Wagner  
Vice-President

By

Harry Seraydarian  
Harry Seraydarian  
Director, Toxics & Waste Division  
United States Environmental  
Protection Agency, Region IX

22  
23 Name:

RK Wagner  
Koppers Company, Inc.

April 25, 1986

24  
25 Thomas R. Hagg  
Attorney for Koppers

Jon K. Wactor  
Jon K. Wactor  
Assistant Regional Counsel  
United States Environmental  
Protection Agency, Region IX

26  
27  
28 Date:

22 Apr 86